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Proposed Attorneys for Yvette Weinstein, Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

ROBERT C. MARSHALL

Debtors.

Case No. BK-S-15-15491-ABL

Chapter 7

**TRUSTEE'S APPLICATION TO EMPLOY
GENERAL COUNSEL NUNC PRO TUNC**

Date: September 1, 2016

Time: 11:00 a.m.

YVETTE WEINSTEIN, Chapter 7 Trustee (the "Trustee") for the above-captioned bankruptcy case (the "Chapter 7 Case"), respectfully requests that the Court approve the employment of Schwartz & McPherson Law Firm ("S&MLF") pursuant to section 327(a) of the Bankruptcy Code¹ and Bankruptcy Rule 2014(a) as counsel for the Trustee, *nunc pro tunc* to March 21, 2016. This Application is also based upon the *Declaration of Jason A. Imes* filed concurrently with this Application and the following Points and Authorities:

I. BACKGROUND

1. Robert C. Marshall (the "Debtors") filed for relief under Chapter 7 of the Bankruptcy Code on September 24, 2015. Trustee has duly qualified and is the acting Chapter 7 Panel Trustee of Debtor's bankruptcy estate.

¹ Unless otherwise expressly stated, all Chapter and Section references are to 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and all Rule references are to the Federal Rules of Bankruptcy Procedure, 1001-9037 (the "Rule(s)").

II. JURISDICTION

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. SCOPE OF REPRESENTATION

3. S&MLF is composed of attorneys who generally limit their practice to the areas of insolvency, reorganization, related litigation, and bankruptcy law. S&MLF is well qualified to represent the Trustee as her bankruptcy counsel. S&MLF has represented numerous debtors, trustees, creditors, unsecured creditors' committees, and other parties-in-interest, and is well qualified to act as attorneys for the Trustee. S&MLF will serve as counsel to the Trustee. S&MLF will provide, without limitation, some or all of the following legal services:

- (a) Advise Trustee with respect to rights, powers, and duties as trustee;
- (b) Assist in advising the Trustee in negotiating, reviewing, drafting documents and pleadings, and consummating any transactions contemplated during this Chapter 7 Case;
- (c) Assist Trustee with review and resolution of claims asserted against the Debtor's estate, including claims objection and claims estimation proceedings;
- (d) Assist with any and all litigation necessary or appropriate to assert rights held by the Trustee or to defend or protect assets of the Debtor's estate;
- (e) Advise and assist the Trustee with actions that she might take to collect and recover property for the benefit of the Debtor's estate.

4. To the best of the Trustee's and S&MLF's knowledge, S&MLF is disinterested within the meaning of Section 101(14) of the Bankruptcy Code in that S&MLF, its shareholders, counsel and associates:

- (a) are not creditors or insiders of the Debtors;
- (b) are not and were not, within two years before the date of this application, a

1 director, officer, or employee of Debtors as specified in subparagraph (c) of
2 11 U.S.C. § 101(14);

3 (c) do not hold an interest adverse to the interest of the estate or of any class of
4 creditors or equity holders except as stated herein.

5 5. S&MLF believes S&MLF does not represent or otherwise have other
6 connections with any persons or entities in this case, **EXCEPT that Yvette Weinstein is the**
7 **Trustee and regularly employs the Firm to represent her in other unrelated bankruptcy**
8 **cases in which she is the Trustee**

9 6. S&MLF does not believe S&MLF represents any interest adverse to the Trustee or
10 the bankruptcy estate, and the Firm's employment would be in the best interests of the estate.

11 7. Pursuant to FRBP 2014, this application is accompanied by the *Declaration of*
12 *Jason A. Imes* of the Schwartz & McPherson Law Firm. The Declaration sets forth, to the best
13 of the declarant's knowledge, S&MLF's connections (see ¶7) with the Debtors, any other party in
14 interest, their respective attorneys and accountants, the United States trustee, or any person
15 employed in the office of the United States trustee.

16 8. This Application sets forth, to the best of Applicant's knowledge, S&MLF's
17 connections (see ¶5) with the Debtors, creditors, any other party in interest, their respective
18 attorneys and accountants, the United States trustee, or any person employed in the office of the
19 United States trustee.

20 9. S&MLF will supplement these disclosures in the event further connections are
21 discovered regarding persons or entities that later become identified as parties in interest in this
22 case.

23 IV. COMPENSATION ARRANGEMENT

24 10. Subject to Court approval, in accordance with 11 U.S.C. §330, the Trustee seeks to
25 retain S&MLF on an hourly basis at the customary and standard rates that S&MLF charges for
26 similar representation, plus reimbursement of actual and necessary expenses incurred by S&MLF
27 in performing its duties.
28

11. S&MLF expects that its compensation will be based upon a combination of factors, including without limitation, experience of counsel, time expended, results achieved, difficulty of matters undertaken and S&MLF's hourly rates billed at the rate of \$385.00 for Jason A. Imes and various hourly rates for other counsel and support staff within S&MLF as set forth in **Exhibit "A"** to the *Declaration of Jason A. Imes* filed concurrently with this Application. S&MLF will not seek to raise the rates of any member of S&MLF for a minimum of six (6) months after the date of the entry of the order approving its employment. S&MLF reserves the right to seek an increase in hourly rates in accord with the U.S. Trustee's Guideline on this matter.

12. No payments have been made or promised to S&MLF for services rendered in any capacity whatsoever in connection with the Chapter 7 Case.

13. There is no agreement or understanding between S&MLF or any other entity for the sharing of compensation to be received for services rendered in or in connection with this Chapter 7 case. No compensation will be paid to S&MLF except as authorized by order of this Court, after notice and an opportunity for a hearing.

V. NUNC PRO TUNC EMPLOYMENT

14. The Trustee requests the firm be employed *nunc pro tunc* to March 21, 2016.

15. Pursuant to 11 U.S.C. §327(a) and FRBP 2014(a), trustee's counsel typically cannot recover fees for services rendered to an estate unless the firm's employment has been authorized by the Bankruptcy Court. Bankruptcy courts in the Ninth Circuit, however, possess the equitable power to retroactively approve a professional's valuable but unauthorized services. In re Atkins, 69 F.3d 970, 973 (9th Cir.1995). In Atkins, the Ninth Circuit noted there are a number of factors that a bankruptcy court can consider in determining whether *nunc pro tunc* approval of professional employment should be authorized. At a minimum, the subject professionals "must (1) satisfactorily explain their failure to receive prior judicial approval [of their employment]; and (2) demonstrate that their services benefitted the bankruptcy estate in a significant manner." In re Atkins, 69 F.3d at 974 and 975-76, citing Halperin v. Occidental Fin. Grp., Inc. (In re Occidental Fin. Grp., Inc.), 40 F.3d 1059, 1062 (9th Cir.1994); and Okamoto v. THC Fin. Corp. (In re THC

1 Fin. Corp.), 837 F.2d 389, 392 (9th Cir.1988).

2 16. In this case, time was spent by counsel reviewing file materials and evaluating
3 potential assets and claims with the Trustee prior to submission and approval of the employment
4 Application. This pre-Application work was necessary to determine if engagement of counsel by
5 the Trustee (and the expense of an employment application) was even economically prudent.
6 Once the Trustee determined that it was in the interest of the estate to incur the expense of
7 engaging counsel, this Application was prepared and submitted. This pre-Application work was
8 undertaken for the benefit of the bankruptcy estate and any fees claimed for this period will still be
9 subject to review and approval by the Court if S&MLF seeks compensation for its services
10 pursuant to 11 U.S.C. § 330 and FRBP 2016.

11 CONCLUSION

12 The Trustee requests that the Court enter an order authorizing the Trustee to employ
13 Schwartzer & McPherson Law Firm as her counsel, *nunc pro tunc* to March 21, 2016, to render
14 services as described above, with compensation at the expense of the Debtor's estate to be in such
15 amount as the Court may hereafter allow.

16 DATED: August 1, 2016.

17
18 /s/Jason A. Imes

19 Lenard E. Schwartzer, Esq.

20 Jason A. Imes, Esq.

21 Schwartzer & McPherson Law Firm

22 2850 South Jones Blvd., Suite 1

23 Las Vegas NV 89146

24 *Proposed Counsel for Yvette Weinstein, Trustee*

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DISTRICT OF NEVADA

In re:

ROBERT C. MARSHALL

Debtors.

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Chapter 7

[PROPOSED]

**ORDER GRANTING TRUSTEE'S
 APPLICATION TO EMPLOY GENERAL
 COUNSEL NUNC PRO TUNC**

Date: September 1, 2016

Time: 11:00 a.m.

Upon the application of YVETTE WEINSTEIN, Chapter 7 Trustee of the above-referenced bankruptcy estate, praying for authority to employ and appoint the Schwartzer & McPherson Law Firm (the "S&MLF") as her general counsel herein, and it appearing that no notice of a hearing on said application need be given, and it further appearing that S&MLF employs attorneys admitted to practice in the State of Nevada and before the United States District Court for the District of Nevada, and the Court being satisfied that the firm represents no interest adverse to the Trustee or the estate of the debtor in this matter, that its employment is necessary and would be in the best interests of the estate, and good cause appearing,

1 **IT IS HEREBY ORDERED** that the Trustee's Application is GRANTED and the Trustee
2 is authorized to employ and appoint the Schwartzer & McPherson Law Firm as her general
3 counsel in this matter, *nunc pro tunc* to March 21, 2016, with the payment of fees subject to
4 review and approval of this Court.

5 **IT IS SO ORDERED.**

6
7 Prepared by:

8
9 /s/ Jason A. Imes

10 Jason A. Imes, Esq.
11 Schwartzer & McPherson Law Firm
12 2850 South Jones Blvd., Suite 1
13 Las Vegas NV 89146
14 *Proposed Attorneys for Trustee*

15
16 Approved / Disapproved by

17 Office of the U.S. Trustee
18 Foley Federal Building
19 300 Las Vegas Blvd. South, Suite 4300
20 Las Vegas NV 89101

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